IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 13TH NOVEMBER 2006 / 22ND KARTHIKA 1928

CRL.A.No. 2043 of 2005()

SC.195/2005 of II ADDL.SESSIONS COURT, ERNAKULAM

.....

APPELLANT: I ACCUSED:

NOUSHAD, C.NO.4987,
CENTRAL PRISON, VIYYUR.

BY ADV. ADV.GEORGE SEBASTIAN(STATE BRIEF)

RESPONDENT: COMPLAINANT:

STATE, REP. BY CIRCLE INSPECTOR
OF POLICE, ALUVA, IN CRIME NO.451/2004.

BY PUBLIC PROSECUTOR SRI.C.M.NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. Thankappan, J.

- -

Crl. A. No. 2043 of 2005

- -

Dated this the 13th day of November, 2006

JUDMENT

First accused in S.C.No.195/2005 on the file of the Sessions Court, Ernakulam is the appellant. He was charge-sheeted for the offences punishable under sections 8(c) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The allegation against the appellant is that he was found in possession of 22 ampules (2 ml. Each) of Buprenorphine, a psychotropic substance, which was kept for sale.

3. In order to prove the prosecution case, the prosecution examined Pws.1 to 5 and Exts. P1 to P14 were marked. MO1 to MO11 were also marked. Relying on the evidence adduced by the prosecution both, oral and documentary, the trial court found the appellant guilty under section 22(b) of the the Narcotic Drugs and Psychotropic Substances Act, 1985. He was convicted thereunder and sentenced to undergo rigorous imprisonment for four years and pay fine of Rs.1,00,000/- under section 22 (b) of the the Narcotic Drugs and Psychotropic Substances Act, 1985 and in default to undergo simple imprisonment for one year. It is also ordered that the remand period undergone by the appellant should be set off towards the

substantial sentence of imprisonment. The above conviction and sentence are assailed in this appeal.

4. Heard learned counsel for the appellant and the learned Public Prosecutor.

5. Learned counsel for the appellant submits that even accepting the entire prosecution evidence, the conviction entered against the appellant would come only under section 22(a) of the the Narcotic Drugs and Psychotropic Substances Act, 1985, as the quantity of the seized article is small quantity. To substantiate the above contention the learned counsel relies on a decision of the Apex Court reported in Ouseph alias Thankachan V. State of Kerala (2004)4 SCC 446. In the above decision the Apex Court considered the question whether possession of 110 ampules of Buprenorphine is small quantity or not. After considering the question the Apex Court altered the conviction of the appellant to section 27 of the Act. The learned counsel also relies on a decision of a Divion Bench of this Court reported in Siyad V. State of Kerala (2005(4) KLT 590). In the above decision this Court also considered the above question and held that “considering the preparation seized as a whole is not commercial quantityor small quantity under item 239 read with item 169 and offence, if proved, will not come as under S.22(c) or 22(a) but only under S.22(b).

6. Applying the above principles laid down by the Apex Court as well as this Court, this Court is of the view that even if the prosecution case is accepted as such, the offence committed by the appellant would fall under section 22(a) of the the Narcotic Drugs and Psychotropic Substances Act, 1985.

7. Hence, the conviction of the appellant is altered to section 22(a) of the the Narcotic Drugs and Psychotropic Substances Act, 1985. The maximum sentence under the above section is six months' imprisonment. As the appellant is already in jail for more than one year, he may be released forthwith unless required in any other case.

The appeal is allowed as above.

K. Thankappan,
Judge.

K. Thankappan,J.

- - - - - - - - - - - - - - - -

Crl.A. No. 2043/2005

- - - - - - - - - - - - - - - -

Judgment

13-11-2006